IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 930 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VADODARA DISTRICT PANCHAYAT & 1 - Petitioner(s)
Versus
VIDYABEN N PARMAR - Respondent(s)

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Appearance :
MR HS MUNSHAW for Petitioner(s) : 1 - 2.
MR NK MAJMUDAR for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 03/05/2006

ORAL JUDGMENT

1.In the present petition, the petitioners have challenged the legality and validity of an order dated 17-09-1999 passed by Gujarat Civil Service Tribunal passed in an appeal filed by the respondents herein.

2.The petitioners are Vadodara District Panchayat Administration. The respondent was engaged as Auxiliary-Nurse-cum-Mid-wife by the petitioners. She was assigned the task of Motivator to persuade the women to undergo family planning operations. In turn she was being paid incentive money for number of patients she would bring. A camp for the said purpose was held on 17-3-1988. Large number of operations were performed. However, it was suspected by the administration that 19 claims for operations at the said camp were bogus. A preliminary inquiry was therefore, conducted. The petitioners had reason to believe that out of total cases for which claim was made by the respondents, four cases were of bogus claims. A charge-sheet to that effect was therefore, issued on 04-10-1989. Upon conclusion of oral inquiry, the Inquiry Officer submitted his report in March, 1992. He found that charges against the respondent are proved. Disciplinary Authority considering, the representation of the respondent, the Inquiry Officer's report and other material on record, found that charges are proved. By an order dated 15-04-1995, therefore, the authorities imposed penalty of compulsory retirement against the respondent. The respondent filed

appeal against the said order before the Appellate Authority. Her appeal was rejected. She therefore, approached Gujarat Civil Services Tribunal. The Tribunal allowed the appeal by impugned order dated 17-09-1999. In the said order, the Tribunal was pleased to observe that the witnesses who were examined during the preliminary inquiry were not examined during the departmental proceedings. The Tribunal also observed that three patients who had undergone such operations have deposed before the Inquiry Officer that operations were actually performed. The Tribunal observed that there was no legal evidence to drive home the charge. On all these grounds, the Tribunal was pleased to set aside the order passed by the Appellate Authority. It was against this order of the Tribunal that Vadodara District Panchayat has filed the present petition before this Court.

3. I have heard learned advocate Shri Munshaw for the petitioners and learned advocate Shri N.K. Majmudar for the respondent. They have taken me through the material on record.

4. Having perused the material on record, it would appear

that inquiry officer had given cogent reasons to hold that charges against the respondent are proved. The respondent admittedly was receiving incentive money for bringing patients for family planning operations. She had put her claims for certain successful operations at the camp held on 17-03-1988. The administration found that the claim was fictitious in respect of four patients. It was found that respondent did not get any details about the address and other particulars of the persons who were alleged to have undergone the operations. It was primarily the duty of the respondent to maintain full record. She had not noted down the full address of the patients. For two of the cases, the address shown is that of Chhota Udepur. Other addresses are also totally incomplete. Naturally therefore, to trace out such persons would be impossible. Additionally, the Inquiry Officer had relied on statements of certain witnesses pointing the guilt of the respondent. The Tribunal did not advert to the said material on record. Though it is true that primarily it is the duty of the department to establish the guilt of the respondent, in the facts of the present case, once there is some evidence on record, it would be necessary for the respondent to make a clean breast of events.

She was the one who made a claim that she had successfully convinced certain persons to undergo family planning operation. It was for this purpose that she was being paid incentive money. She therefore, had to maintain proper records, so that follow up treatment can be given to the patients and the authorities can verify the claim, if found necessary. The respondent maintained no records. This would further point out to her guilt.

5. In my view, Tribunal erred in interfering with the order of punishment imposed by the Disciplinary Authority as upheld by the Appellate Authority. The Tribunal was not acting as Appellate Authority and, therefore, could not have re-appreciated the evidence. If there was some material on record on the basis of which Disciplinary Authority could have held charges as proved, it was not open for the Tribunal to substitute the findings of the Disciplinary Authority by re-appreciating the evidence as an Appellate Authority. There was sufficient material on record available with the authorities to hold that charges against the respondents are proved. The witnesses had stated that such persons were either not available in village in

which they were stated to be residing or that they had not undergone such operations. Under such circumstances, it was the duty of the respondent to point out as to how her claims for incentive money could have been sustained. The respondent though examined Dr. Patel who had rendered voluntary services, his testimony would not be the last word, more so, since the Doctor could not support his statement through any record. If after evaluation of record, Disciplinary Authority found that charges are proved, I find that in view of the material on record, such findings of the Disciplinary Authority cannot be categorised as perverse.

6.I am therefore, unable to agree with the submissions made by the learned advocate for the respondent that the department has erred in proceeding on the footing of guilt of respondent, casting her duty to prove her innocence. I am also unable to uphold the contention that since in some of the cases, a different punishment was imposed, the respondent should have been dealt with leniently. The respondent had put a false claim for incentive money. When such allegations of financial irregularities are proved, it will not be possible to

interfere with the quantum of punishment.

7. In the result, the petition is allowed. The impugned order dated 17-09-1999 passed by Gujarat Civil Service Tribunal is set aside. Rule is made absolute with no order as to costs.

(Akil Kureshi,J.)

(raghu)